

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST,
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY,
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND,
DISTRICT COUNCIL 37, AFSCME -
HEALTH & SECURITY PLAN, JUNE SWAN,
MAUREEN COWIE and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation, and McKESSON CORPORATION,
a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

**DEFENDANT MCKESSON CORPORATION'S MOTION FOR LEAVE
TO FILE UNDER SEAL**

On February 23, 2007, May 7, 2007, and August 3, 2007, the Court granted McKesson's requests to seal a discrete number of third party documents filed in connection with McKesson's submissions regarding class certification. This motion seeks like treatment for the same or similar third party information referenced in McKesson's Response to Dr. Hartman's September 14, 2007 Submission Regarding the Court's Class Certification Order. Certain of these documents contain or reflect highly sensitive contracting terms, including pricing and financial terms, the disclosure of which would risk competitive injury to the third parties that negotiated or agreed to these terms. Others reveal the identities of a PBM's clients or constitute

internal documents reflecting business analyses or strategies for responding to drug pricing trends and market forces. For these and other reasons, McKesson submits this motion to ensure that the same or similar third party information receives the same protection.

McKesson hereby respectfully moves this Court for leave to file the following submissions that include such confidential information under seal (with redacted versions filed in the public record): (a) McKesson Corporation's Response to Dr. Hartman's September 14, 2007 Submission Regarding the Court's Class Certification Order; (b) the Declaration of Paul Flum in Support of this Response, and Exhibits A, B, D, F, I, L, P-S, V-Y, and CC thereto; and (c) the Expert Declaration of Robert D. Willig.

In support of this motion, McKesson states as follows:

Confidential Third Party Information

1. Third parties to these proceedings have produced confidential information in the documents described below. Such confidential information of third parties is entitled to heightened protection. *See Rossbach v. Rundle*, 128 F. Supp. 2d 1348, 1352 (S.D. Fla. 2000) ("When the sensitive information pertains to non-parties who are not public figures, the balancing of interests in favor of protecting the privacy of the non-parties and against uninhibited access to the records is strengthened."); *see also United States v. Snyder*, 187 F. Supp. 2d 52, 63 (N.D.N.Y. 2002) ("The privacy interests of innocent third parties . . . should weigh heavily in a court's balancing equation.") (citation omitted). The disclosure of the third party information discussed below would risk competitive injury to third parties in these proceedings. McKesson therefore seeks leave to file the following third party documents under seal:

2. Exhibits A and B to the Flum Declaration contain highly sensitive confidential information produced by third parties in this case, including information regarding internal business strategies that this Court has previously sealed. These documents were marked "Highly Confidential" and "Subject to Protective Order."

3. Exhibit Q to the Flum Declaration reflects highly sensitive pricing terms in the contracts between third parties Blue Shield of California and Express Scripts, Inc., including terms that may be currently in effect.

4. Exhibit Y to the Flum Declaration contains excerpts from a deposition of third party, Rite Aid Corporation, which was designated “highly confidential” by this third party. This exhibit reflects information regarding a third party’s profitability in response to drug pricing trends.

5. Exhibit CC to the Flum Declaration contains excerpts from the deposition transcript of William Kiefer of Express Scripts, Inc., which was designated by this third party as “highly confidential.” McKesson seeks only to seal excerpts that were previously sealed by the Court on August 9, 2007 and an additional excerpt from this very same deposition transcript.

Plaintiffs’ Documents

6. Exhibits D, F, I, L, P, R-S, and V-X to the Flum Declaration were marked by plaintiffs as “confidential” or “highly confidential.”

Declaration of Robert D. Willig

7. The Expert Declaration of Robert D. Willig, dated October 15, 2007, discusses or references information contained in the above-described documents, documents that have been previously sealed by this Court, and other similar confidential information of third parties. McKesson therefore seeks leave to file this declaration under seal and to publicly file a version that redacts only the highly sensitive information of other parties from any public filings in this case.

8. Paragraph 14 of the Protective Order mandates that any document or pleading containing the type of confidential material referenced above be filed under seal. McKesson hereby seeks to comply with the terms of the Protective Order upon which third parties relied when they produced documents in response to subpoenas served in this action.

WHEREFORE, McKesson respectfully requests that this Court grant it leave to file under seal (a) McKesson Corporation’s Response to Dr. Hartman’s September 14, 2007 Submission

Regarding the Court's Class Certification Order; (b) the Declaration of Paul Flum in Support of this Response, and Exhibits A, B, D, F, I, L, P-S, V-Y, and CC thereto; and (c) the Expert Declaration of Robert D. Willig. McKesson has filed in the public record redacted copies of these submissions, which excise only the confidential exhibits or information contained in these submissions.

Respectfully submitted,

McKesson Corporation
By its attorneys:

/s/ Lori A. Schechter
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Dated: October 15, 2007

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I, Paul Flum, counsel of record for defendant McKesson Corporation, hereby certifies that McKesson's counsel has spoken with representatives of the third parties whose documents are the subject of this motion, and those third parties have confirmed that they regard the documents as confidential and that the documents should be filed under seal.

/s/ Lori A. Schechter
Lori A. Schechter

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on October 15, 2007.

/s/ Lori A. Schechter

Lori A. Schechter

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**[PROPOSED] ORDER GRANTING MCKESSON CORPORATION'S
MOTION FOR LEAVE TO FILE UNDER SEAL**

McKesson Corporation seeks leave to file under seal documents filed in connection with its Response to Dr. Hartman's September 14, 2007 Submission Regarding the Court's Class Certification Order. These documents contain information produced by other parties in this case that is confidential to those parties. McKesson has publicly filed redacted copies that excise only the confidential exhibits or information of these other parties. The Court, having considered all documents in support and

opposition hereto, hereby GRANTS McKesson's Motion for Leave to File Under Seal the following documents:

1. McKesson Corporation's Response to Dr. Hartman's September 14, 2007 Submission Regarding the Court's Class Certification Order;
2. Declaration of Paul Flum in Support of this Response, and Exhibits A, B, D, F, I, L, P-S, V-Y, and CC thereto; and
3. Expert Report of Robert D. Willig.

IT IS SO ORDERED.

DATED: _____

Hon. Patti B. Saris
United States District Court Judge